



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

1100 Commerce Street  
Dallas, TX 75242

501-03.00

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

**Date:** July 13, 2010

**Person to Contact:**

Release Number: **201045027**

Release Date: 11/12/10

LEGEND

ORG = Organization name

XX = Date Address = address

**Badge Number:**

**Contact Telephone Number:**

**Contact Address:**

**Employer Identification Number:**

**ORG**

**ADDRESS**

**CERTIFIED MAIL**

Dear

This is a final notice of adverse determination that your exempt status under section 501(c)(3) of the Internal Revenue Code is revoked. Recognition of your exemption under Internal Revenue Code section 501(c)(3) is revoked effective January 1, 20xx the following reason(s):

You are not organized and operated exclusively for an exempt purpose as required by Internal Revenue Code section 501(c)(3). You are not and have not been engaged primarily in activities which accomplish one or more exempt purposes. You are not a charitable organization within the meaning of Treasury Regulation 1.501(c)(3)-1(d); rather, your activities further a substantial nonexempt commercial purpose and serve private rather than public interests.

Contributions to your organization are no longer deductible effective January 1, 20xx.

Since your exempt status has been revoked, you are required to file Form 1120, U.S. Corporation Income Tax Return, for all years beginning on or after January 1, 20xx.

Income tax returns for subsequent years are to be filed with the appropriate Service Center identified in the instructions for those returns.

It is further determined that your failure to file a written appeal constitutes a failure to exhaust your available administrative remedies. However, if you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia before the (ninety-first) 91st day after the date that this determination was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. To secure a petition form, write to the following address:

Please understand that filing a petition for a declaratory judgment under IRC section 7428 will not delay the processing of subsequent income tax returns and assessment of any taxes due.

You also have the right to contact the Office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers. You can call 1-877-777-4778, and ask for the Taxpayer Advocate assistance or you can contact the Advocate from the site where this issue was determined by writing to:

Taxpayer Advocate assistance cannot be used as substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determination, nor extend the time fixed by law that you have to file a petition in Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

This letter should be kept within your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely,

Nanette M. Downing  
Director, EO Examinations

Enclosures:  
Publication 892

**Internal Revenue Service**

**Department of the Treasury**

Date: May 11, 2010

ORG  
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

**Certified Mail - Return Receipt Requested**

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, please sign and return the enclosed Form 6018, Consent to Proposed Adverse Action. We will send you a final modification or revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing  
Director, EO Examinations

Enclosures:  
Publication 892  
Publication 3498  
Report of Examination

866-A	EXPLANATION OF ITEMS	Page 1 of 2
Name of Taxpayer ORG	EIN: EIN	Years/Period Ended Dec. 31, 20XX

**LEGEND**

ORG = Organization name      XX = Date      City = city      State = state      CO-1 =  
1<sup>st</sup> COMPANY      RA-1, RA-2, RA-3 & RA-4 = 1<sup>st</sup> RA, 2<sup>nd</sup> RA, 3<sup>rd</sup> RA & 4<sup>th</sup> RA

**Issue 1:** Is the ORG operating exclusively for public and charitable purposes as described in Internal Revenue Code (IRC) Section 501(c)(3)?

**Facts**

The ORG ("ORG" or "Organization) incorporated on Aug. 21, 19XX in State for charitable purposes that included increasing awareness, appreciation, and understanding of opera by conducting programs such as developing school programs to expose students to opera, providing lectures to educate the public about opera, and by supporting the composition of new American Opera.

The planned operations did not materialize because of lack of structure and volunteers who will develop and carry out fund-raising program that will provide financial support to carry out the planned operations. RA-1 – a Julliard trained voice teacher and a former opera singer was planned to be the artistic director of the Organization. Due to the lack of the financial support RA-1 was unable to devote her time to the Organization and she instead engaged in teaching students voice lessons which she conducted as her own private business. RA-1 rented theater space at the CO-1 in City and she also provided sometimes free concerts where her students performed in front of the public- those free concerts' costs were paid for by RA-1. RA-1 trained several students who gained access to Opera, including RA-2. Sometimes RA-1 asked her former teacher or a colleague respectively RA-3 or RA-4 to teach some of her students. Those lessons were paid by the students directly to RA-1 or the other teachers and the Organization did not hire any staff or teachers. The Organization had a bank account but it was closed in 20XX. In 20XX Organization had no activities. Organization's Board has not functioned after 19XX and no meetings were conducted.

**Law:**

a. Requirement for Exemption under IRC 501(c)(3)

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax of organizations that are both organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

The Dual Test: Organized and Operated

1. IRC 501(c)(3) requires an organization to be both "organized" and "operated" exclusively for one or more IRC 501(c)(3) purposes. If the organization fails either the organizational test or the operational test, it is not exempt. Reg. 1.501(c)(3)-1(a)(1).

2. The organizational test concerns the organization's articles of organization or comparable governing document. The operational test concerns the organization's activities. A deficiency in an

866-A	EXPLANATION OF ITEMS		Page 2 of 2
Name of Taxpayer	EIN:	Years/Period Ended	
ORG	EIN	Dec. 31, 20XX	

organization's governing document cannot be cured by the organization's actual operations. Likewise, an organization whose activities are not within the statute will not qualify for exemption by virtue of a well written charter. Reg. 1.501(c)(3)-1(b)(1)(iv).

### Operational Test

1. To satisfy the operational test, an organization must be operated exclusively for one or more of the following purposes:

- \*religious
- \*charitable
- \*scientific
- \*testing for public safety
- \*literary
- \*educational
- \*fostering national or international sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)
- \*prevention of cruelty to children or animals

2. Reg. 1.501(c)(3)-1(c)(1) provide that an organization is operated exclusively for charitable purposes only if it engages primarily in activities that accomplish those purposes in (1) above.

### **Taxpayer's position:**

Taxpayer was requested to submit comments on the Form 5701 that was sent on March 26, 20XX. The taxpayer's reply signed on March 29, 20XX indicated agreement with the facts concerning organization's operations as were presented in the draft report that was sent on March 26, 20XX.

### **Government's Position:**

The government contends that the ORG did not conduct any activities in 20XX and prior years and therefore it did not operate exclusively for one or more of the purposes specified in Section 501(c)(3). Therefore, as explained, the ORG failed to meet the requirements for exemption under Section 501(c)(3) as is further explained in Reg. 1.501(c)(3)-1(b)(1)(iv).

**Conclusion:** as described above, the ORG Section 501(c)(3) exemption should be revoked effective January 1, 20XX.